

HOUSE BILL NO. 725

INTRODUCED BY H. KLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO UNDERGROUND FACILITY LOCATION AND EXCAVATION NOTIFICATION; DEFINING "PROJECT OWNER"; MAKING AN EXCAVATOR RESPONSIBLE FOR MAINTAINING MARKINGS AFTER AN UNDERGROUND FACILITY OWNER HAS LOCATED AND MARKED AN UNDERGROUND FACILITY; MAKING A PROJECT OWNER RESPONSIBLE FOR THE COSTS OF RELOCATING AND REMARKING AN UNDERGROUND FACILITY THAT HAS ALREADY BEEN LOCATED AND MARKED; MAKING AN EXCAVATOR RESPONSIBLE FOR THE COSTS OF AN EMERGENCY REQUEST THAT IS A FALSE ALARM; AMENDING SECTIONS 69-4-501, 69-4-503, AND 69-4-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(4) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving.

(b) Excavation does not include surface road grading maintenance or road or ditch maintenance that

1 does not change the original road or ditch grade or flow line.

2 (5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

3 (6) "Identified but unlocatable underground facility" means an underground facility that has been
4 identified but cannot be located with reasonable accuracy.

5 (7) "Locatable underground facility" means an underground facility that can be field-located and
6 field-marked with reasonable accuracy.

7 (8) "Locate" means to use specialized equipment to identify the location of underground facilities or the
8 actual location of underground facilities identified by the use of specialized equipment.

9 (9) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location
10 or absence of underground facilities, in accordance with the current color code standard of the American public
11 works association. Marking must include identification letters indicating the specific type of underground facility
12 and the width of the facility if it is greater than 6 inches.

13 (10) "One-call notification center" means a service through which a person may request a locating and
14 marking of underground facilities.

15 (11) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality,
16 governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal representative
17 of the listed entities.

18 (12) "Project owner" means a governmental entity or private entity that has a legal interest in any
19 acquisition, improvement, construction, or undertaking of any kind involving excavation of underground facilities.

20 ~~(12)~~(13) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both
21 sides of an underground facility.

22 ~~(13)~~(14) "Underground facility" means a facility buried or placed below ground for use in connection with
23 the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision,
24 fiber optics, electrical energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers,
25 conduits, cables, valves, lines, wires, manholes, and attachments to the listed items."
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27 **Section 2.** Section 69-4-503, MCA, is amended to read:

28 **"69-4-503. Notification -- locating and marking.** (1) Before beginning an excavation, the excavator
29 shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed
30 excavation.

(2) After an excavator has notified the appropriate one-call notification center of a proposed excavation, an owner of an underground facility shall:

(a) provide the locates and mark the location within 2 business days; or

(b) respond immediately if the excavator notifies the one-call notification center that an emergency exists.

(3) (a) After an owner of an underground facility has located and marked the underground facilities, the excavator ~~shall determine if weather, time, or other factors may have affected location marks, warranting relocation of the facilities~~ is responsible for maintaining the markings.

(b) ~~If excavation has not occurred within 30 days of the locate and mark, the excavator shall request that the facility be relocated and remarked before excavating unless other arrangements have been made with the underground facility owner. The excavator project owner is responsible for costs associated with relocating and remarking a facility that is not excavated within 30 days of the locate and mark~~ has already been located under subsection (3)(a) unless other arrangements have been made with the underground facility owner.

(4) Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of the facilities shall provide the excavator with the best available information as to their locations. An excavator may not excavate until all known facilities have been located and marked. An excavator is not responsible for damages to an underground facility that cannot be located by its owner. ~~Once the facilities are located and marked by the facility owner, the excavator is responsible for maintaining the markings.~~

(5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by locating and marking the facility or by notifying the excavator that locating and marking is unnecessary. An excavator may not begin excavating before the locating and marking is complete or before the excavator is notified that locating and marking is unnecessary.

(6) An excavator shall locate and mark the area to be excavated if requested by the facility owner or the owner's representative. If an excavator discovers an underground facility that has not been located and marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

(7) An underground facility owner may attempt to identify the location of a private underground facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."

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2 **Section 3.** Section 69-4-508, MCA, is amended to read:

3 **"69-4-508. Emergency location and excavation.** (1) When an emergency excavation is required, the
4 excavator shall notify the one-call notification center. An underground facility owner shall respond as soon as
5 is practical after notification.

6 (2) Requesting an emergency locate or an emergency excavation that is not an emergency locate or
7 an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and is
8 subject to the penalties under 45-7-204.

9 (3) The excavator is responsible for costs associated with locating and marking underground facilities
10 in the event that an underground facility owner responds to a request for an emergency locate or an emergency
11 excavation that is not an emergency locate or an emergency excavation under subsection (2)."

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13 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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